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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

Synametrix Inc. d/b/a Synametrix  
Technologies,

Plaintiffs,

- against -

PB&J Software, LLC

Defendants.

CASE NO.: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
JUDGMENT OF PATENT INVALIDITY  
AND NON-INFRINGEMENT**

Synametrix Inc. d/b/a Synametrix Technologies (“Synametrix”) alleges by and through its attorneys as follows:

**THE PARTIES**

1. Synametrix is a privately held company headquartered at 666 Plainsboro Road, Suite 656, Plainsboro, NJ 08536.

2. On information and belief, PB&J Software, LLC (“PB&J”) is a Missouri limited liability company with its principal place of business at 11880 Conway Road, St. Louis, MO 63131.

3. Based on information and belief, PB&J is engaged in the business of backup software industry, and does business within the jurisdiction of this Court.

### **VENUE AND JURISDICTION**

1. This is an action seeking a declaratory judgment that Synametrics is not infringing any valid patent rights owned by PB&J, including any valid rights in U.S. Pat. No. 7,356,535 ("535 Patent"). A copy of the '535 Patent is attached as Exhibit A.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory judgment actions), and 28 U.S.C. § 1331 (federal question).

3. Jurisdiction is proper in this Court because this litigation arises under federal law, the United States Patent Laws, 35 U.S.C. §§1 *et seq.* This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a), providing for federal question jurisdiction of patent infringement actions and exclusive jurisdiction of patent infringement actions in the U.S. District Courts.

4. Personal jurisdiction over PB&J is proper under at least the New Jersey long-arm statute, N.J.R. 4:4-4. This Court has personal jurisdiction over PB&J because PB&J, on information and belief, conducts business in the State of New Jersey and within this district, including the advertising and sale of its products through the Internet to New Jersey residents.

5. An actual case or controversy has arisen between the parties. PB&J has intentionally sent correspondence to Synametrics in this district and has intentionally attempted to interfere with the business of Synametrics, a forum resident, by threatening Synametrics with litigation. Specifically, PB&J has asserted that Synametrics is making, selling, distributing, and / or helping, assisting, conspiring to make, sell, and/or distribute products which allegedly violate

the '535 Patent.

6. Because PB&J has availed itself of the privileges of conducting activities in this forum, it is now subject to personal jurisdiction in this district.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and / or (c) because PB&J is subject to personal jurisdiction in this district and thus resides in this district, and a substantial part of the alleged events or omissions giving rise to the claim occurred in this district.

#### **FACTUAL ALLEGATIONS AND BACKGROUND**

8. Synametrics specializes in software and services in information technology (IT), providing product innovation and IT expertise.

9. Synametrics' products include private cloud backup software that allows multiple machines to backup folders/files to a central repository within an enterprise, offered by Synametrics under the trade name Syncrify. For several years Synametrics has invested significant time, financial recourses and efforts in the research and development of its IT software and products, including its Syncrify product.

10. On March 8, 2013, PB&J sent a letter to Synametrics indicating that PB&J believes that Synametrics is "in violation of [the '535 Patent]" and wherein PB&J accused Synametrics of "selling or purporting to license one or more products which include the seeding feature alleged to be covered by the '535 patent." A copy of that letter is attached hereto as Exhibit B.

11. The letter of March 8, 2013 alleges, inter alia, that the '535 Patent "pertains to the

method in which data on a computer is "backed up" at a remote site for safe keeping" and that it "specifically covers backup software which allows the computer user to choose to have data off loaded from his or her computer (the "user's computer") to a fixed medium (such as, but not limited to, a disk, zip drive, flash drive, or portable hard drive) and to then have that fixed medium transported to a backup site at which point the data is uploaded off of such fixed medium to back up servers or other storage media", referred to in the letter as a "seeding feature". (*Re* Exhibit B).

12. The letter further claimed that Synametrics is "violating the '535 patent and allegedly illegally profiting from sales, licensing or other uses" of Synametrics' products for allegedly including the seeding feature covered by the '535 Patent. (*Re* Exhibit B).

13. Demand has been made in the letter that, unless Synametrics agrees to the licensing and settlement demands set forth within the letter it must immediately cease and desist from its direct or indirect use, sale, licensing, or other exploitation of Synametrics allegedly infringing Syncrify product, and take down or modify its website to remove all references to any seeding function, but, the letter continues, such actions will not excuse any alleged past violations or release Synametrics from liability to PB&J unless a monetary settlement is also reached with respect to that past activity. (*Re* Exhibit B).

14. The letter stated that PB&J has "has already sued four (4) infringers and is ready willing and able to, and will, commence litigation if settlement is not reached, or the alternative licensing program discussed below is not adopted." (*Re* Exhibit B).

15. As a result of PB&J's letter with Synametrics and the imminent threat of litigation, there is a justiciable controversy between the parties as to whether Synametrics is

infringing any valid patent rights owned by PB&J, including whether Synametrics' activities infringe any valid claim of the '535 Patent and whether the '535 Patent is valid.

### **CLAIMS FOR RELIEF**

#### **REQUEST FOR DECLARATORY JUDGMENT:**

#### **Invalidity and Non-Infringement of the '535 Patent**

1. Synametrics realleges and incorporates into this section the preceding paragraphs of this Complaint.

2. There is a justiciable controversy between the parties as to whether Synametrics has unlawfully infringed any claims of the '535 Patent (*Re* Exhibit A).

3. Synametrics is entitled to a declaratory judgment that it has not unlawfully infringed any valid claim of the '535 Patent.

4. There is a justiciable controversy between the parties as to whether any claim of the '535 Patent is valid.

5. Synametrics is entitled to a declaratory judgment that the allegedly infringed claim of the '535 Patent is invalid under one or more sections of the Patent Act codified in Section 35 of the United States Code including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and / or 112.

### **PRAYER FOR RELIEF**

WHEREFORE, Synametrics respectfully requests the following relief:

A. A declaratory judgment that Synametrics has not unlawfully infringed the claim of the

‘535 Patent;

- B. A declaratory judgment that the ‘535 Patent is invalid under one or more of 35 U.S.C. §§ 101, 102, 103 and / or 112;
- C. A permanent injunction precluding PB&J and its officers, agents, servants, employees, attorneys, and any other person acting in concert or participation with such persons, from representing or implying that SYNAMETRICS has unlawfully infringed or is unlawfully infringing the ‘535 Patent;
- D. An award of attorneys’ fees and costs pursuant to 35 U.S.C. § 285, or as permitted by law; and
- E. For such other further relief as the Court deems just and proper.

### **DEMAND FOR JURY TRIAL**

Synametrics requests a trial by jury on all issues so triable.

Dated: March 22, 2013

Synametrics Technologies  
By Counsel,



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